

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF
HAWK RELAY, LLC FOR A CERTIFICATE OF
AUTHORITY TO PROVIDE INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN
SOUTH DAKOTA

RECEIVED TC07-014
JUL 13 2007

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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Transcript of Proceedings
June 26, 2007

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
DUSTIN JOHNSON, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
STEVE KOLBECK, COMMISSIONER

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Heather Forney	Deb Gregg
Dave Jacobson	Keith Senger
Steve Wegman	Harlan Best

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the USDSU Technology Center,
Room 282, Sioux Falls, South Dakota, on the 26th day of
June 2007, commencing at 10 o'clock a.m.

1 (The following proceedings are through an interpreter)

2 CHAIRMAN JOHNSON: With that, let's move to the
3 telecommunications portion of the docket. Item No. 1 is
4 TC07-014, and that does deal with the application of Hawk Relay,
5 LLC for a Certificate of Authority to provide Internet exchange
6 telecommunications services in South Dakota.

7 And the question before this Commission today is shall
8 it grant a Certificate of Authority to Hawk Relay, LLC?

9 As the moving party, we will first look to Hawk Relay
10 and see if they have anything to say with regard to their
11 application.

12 Anyone from Hawk Relay on the line wishing to make any
13 comments?

14 MR. WARNER: Yes. This is Christian Warner, and I
15 wanted to offer some information about VRS services for the
16 deaf. You have the authority to go ahead with the certificate.
17 I have taken a look at it and think that things should go
18 forward, to go through the application process.

19 CHAIRMAN JOHNSON: Okay. Thank you very much. At
20 this time we would look towards staff, Mr. Rounds, Mr. Senger,
21 or Ms. Cremer for their comments.

22 MR. SENGER: Yes. This is Keith Senger from
23 Commission staff. Can you hear me okay?

24 CHAIRMAN JOHNSON: Yeah. We can hear you fine, Keith.

25 MR. SENGER: On February 23, 2007 Hawk Relay submitted

1 an application for an interexchange certificate of authority in
2 accordance with ARSD 20:10:24:02. Specifically, Hawk Relay is a
3 video relay, or VRS, an Internet protocol relay, or IP relay
4 provider, and is seeking certification so it can be eligible for
5 reimbursement as an interstate telecommunications relay TRS fund
6 reimbursement as a VRS or IP relay provider.

7 In March of 2000 the FCC recognized VRS as a form of
8 TRS. VRS allows the user to communicate in sign language via a
9 broadband video link instead of a text-based TRS, which has
10 limitations.

11 In April of 2002 the FCC recognized IP relay as
12 another form of TRS. IP relay allows a user to place text calls
13 from any Internet-connected computer rather than dedicated TTY.
14 Unlike TRS services, VRS and IP relay use the Internet for at
15 least one leg of the call. Thus, it is not currently possible
16 to determine the origination or the termination of the Internet
17 side of the call, therefore, making it impossible to determine
18 whether the local -- whether the call is a local or interstate
19 or intrastate.

20 As a result, the FCC has ruled on an interim basis
21 that the VRS and IP relay calls are interstate in nature and the
22 cost of providing those -- cost of providing both interstate and
23 intrastate VRS and IP relay are compensated from the interstate
24 TRS fund.

25 Therefore, the FCC ruled that common carriers seeking

1 to provide VRS or IP relay, and only those services, should not
2 be precluded from doing so simply because they cannot contract
3 with the state or other eligible TRS provider and thus create a
4 new eligibility category -- categories for federal certification
5 of VRS and IP relay providers.

6 This step allows -- with this step the FCC has opened
7 the door for VRS and IP relay providers like Hawk Relay to
8 provide those services and get compensated directly from the
9 interstate TRS fund.

10 One of the criteria for FCC certification for
11 interstate TRS fund eligibility is demonstration of a -- of
12 status as a common carrier. This causes some concern.

13 First of all, I find it somewhat odd that a State
14 Commission has to certify a common carrier -- has to certify
15 common carrier status for interstate compensating services such
16 as VRS and IP relay.

17 Second, I'm not sure that the services provided
18 qualify as telecommunications services that justify common
19 carrier status designation.

20 The FCC has clearly indicated in paragraph 22 of its
21 December 12, 2005 Order that demonstration of status as a common
22 carrier is necessary to be eligible for the TRS fund
23 compensation.

24 Additionally, in Footnote 84 of that same Order the
25 FCC indicated that noncommon carriers seeking to offer VRS or IP

1 relay may continue to do so by joining a certified state program
2 or subcontracting with an entity offering TRS and eligible for
3 compensation from that fund. So the FCC has distinguished
4 between common carriers and noncommon carriers for TRS services.

5 Hawk Relay has indicated that they want to get out
6 from subcontracting and wish to seek direct compensation from
7 the interstate TRS fund. In fact, the reason for this
8 application is to get a COA from the South Dakota Public
9 Utilities Commission in order to demonstrate common carrier
10 status. However, Hawk Relay will not be providing any of the
11 traditional telecom services that this Commission usually issues
12 a COA for.

13 The question in my mind is does VRS or IP relay
14 qualify an entity as a common carrier? If it does, then why
15 does the FCC make Hawk Relay jump through this loop?

16 Based on Footnote 84 as I referred to earlier, I tend
17 to think that providing only TRS services does not qualify as a
18 common carrier status. If this service does not qualify as a
19 telecommunications service, should this Commission give
20 Hawk Relay a COA since it will not be providing traditional
21 telecommunications services of a common carrier?

22 I can find no FCC or state guides on this matter, but
23 I found other State Commissions who have issued COAs to like
24 entities. In the end with the exception of a few requested
25 waivers, Hawk Relay has provided all of the required information

1 and thus has met the Commission criteria for a Certificate of
2 Authority, and thus it is as deserving as any other company in
3 receiving the COA.

4 Keep in mind that we have issued other COAs for other
5 carriers who never really ever intend to provide any
6 telecommunications services to any South Dakota customers. Why
7 should Hawk Relay be any different?

8 Therefore, in the end I recommend that the Commission
9 grant Hawk Relay an interexchange Certificate of Authority and
10 grant a waiver for providing financial statements and a waiver
11 for providing the tariff since they are not providing any of the
12 traditional tariff services that require end user billings.

13 Additionally, I recommend and Hawk Relay has agreed
14 that the COA contain the standard restrictions from providing
15 any prepaid services and from accepting or collecting any
16 deposits or advanced payments. I also recommend and Hawk Relay
17 has agreed to the restriction of providing -- from providing any
18 end user services that require end user billings and thus
19 removing the need for that tariff.

20 I also believe that this Order should limit
21 Hawk Relay's COA to the provision of VRS services, IP relay, or
22 any other future FCC-approved TRS services. If Hawk Relay
23 should ever wish to provide any end user billing services or
24 prepaid services or collect advanced payments or deposits from
25 any customer, Hawk Relay would need to seek additional

1 Commission authority.

2 Thanks.

3 CHAIRMAN JOHNSON: Thank you, Mr. Senger. We
4 appreciate that, in particular the fact that you -- this is not
5 a typical COA for us so I certainly appreciate you getting us
6 from A to Z, walking us through this process and why this docket
7 is before us.

8 At this time we will pause to see if there are any
9 Commissioner or advisor questions or comments.

10 Mr. Smith, go ahead.

11 MR. SMITH: Excuse me, Keith. This is John Smith. I
12 can't find it in the FCC Order right now, but I recall when I
13 read this the first time language in there that seemed to
14 indicate that the FCC did not require that any of these services
15 actually provide ordinary telecommunications services to be
16 considered common carriers.

17 You know, they use language like form over substance
18 and that kind of thing and seemed to recognize them if they're
19 generally offering their services as available to the public as
20 opposed to a particular contract situation that they seemed to
21 recognize them as common carriers regardless of whether they
22 were providing what we would call traditional telecommunications
23 services.

24 And did I read the Order correctly, or did I miss
25 something there?

1 MR. SENGER: John, this is Keith. You know, I've read
2 the Order several times. And I -- I seem to think that the FCC
3 kind of ducked. There's no doubt in my mind in reading the
4 Order that the FCC wanted to provide an avenue for carriers such
5 as Hawk Relay to recover -- to seek reimbursement directly from
6 the federal TRS fund.

7 But one of the -- one of the standards that they have
8 in there -- because after -- after this process Hawk Relay is
9 going to have to go to the FCC to get approval. And the reason
10 why Hawk is here is to determine -- to get common carrier
11 status. They're going to need a COA from us. Because that is
12 one of the eligibility requirements of the FCC. It states it in
13 paragraph -- oh, I've got to pull the Order. I think it's 23 of
14 the Order. Let me pull it quick here.

15 I don't -- yeah. I think it's page 20 -- or
16 paragraph -- I'm not finding it right now. But I'm pretty sure
17 it's -- it's -- I think it was number 7, if I remember
18 correctly, in one of the criteria.

19 And then it goes on to state that if you're not a
20 common carrier, you have to subcontract. You can't get paid
21 directly. So they're clearly indicating common carrier,
22 noncommon carrier. So to me that's saying that the FCC is not
23 viewing those people who are -- those entities who are only
24 providing VRS or IP relay as common carriers.

25 So I -- it's -- it puts me in kind of a situation

1 where, you know, the FCC is -- they want these people but
2 they've got to be a common carrier -- or they want these
3 entities, but they have to be a common carrier. And it's -- I
4 didn't necessarily read it the way you did.

5 MR. SMITH: Well, but, Keith, maybe take a look at
6 paragraph 26, which happens to be a paragraph that you circled
7 for me so it helped me find it finally.

8 The only thing I'm looking at is -- and again I think
9 you're right. It's sort of an attempt by the FCC to pigeonhole
10 this into a category where practicality can win out. But it
11 basically -- as I read it, it says, Without regard to the
12 provision of traditional TSPN-based telephony. And I guess that
13 inconsistency is -- I don't get it.

14 And I guess the other anomaly here is with the FCC
15 certification program seems to be offered as an alternative to
16 state certification. So I'm just curious. I guess it's more of
17 a question just out of curiosity than -- I'm not -- I'm not
18 arguing with you. I'm just wondering -- I'm kind of wondering
19 what this is all about when this is an FCC certification
20 process.

21 MR. SENGER: Yeah. And I understand that and read
22 that now. And to me it just totally baffles me because, you
23 know, you don't have to be providing traditional
24 telecommunications services but yet they go through that whole
25 rigmarole of being a common carrier. And they say, you know,

1 because of Footnote 84 it indicates if you're not a common
2 carrier providing those services, the VRS or the IP relay. So
3 to me that's a hint that just because you're providing VRS and
4 IP relay you're not necessarily a common carrier.

5 But above all of that, getting away from all of that,
6 I don't believe that we're actually saying, hey, this company's
7 a common carrier. Because if we have a brand new company who
8 comes in and who has never provided any telecommunications
9 services before, all we're doing is saying, yes, we're giving
10 you the authority to go ahead and do that.

11 So that's kind of the way I look at it. We're doing
12 that with Hawk Relay here and, you know, giving them a
13 Certificate of Authority. And if the FCC wants to say that,
14 yeah, that is determined as common carrier status, then, fine,
15 I'm good with that.

16 MR. SMITH: Excuse me, Mr. Chairman.

17 CHAIRMAN JOHNSON: Sorry to interrupt, Mr. Smith.
18 Dusty Johnson here. And I understand this doesn't fit into our
19 normal standard COA box. But -- and let me know if I'm missing
20 something, but I certainly don't see any harm by approving this
21 COA even if it is very unconventional.

22 MR. SMITH: I agree. And I believe what the FCC was
23 getting at with common carrier -- because they say you don't
24 have to be -- it says in black-and-white right in front of my
25 face. I think what they're getting at is the services have to

1 be offered on a nondiscriminatory basis generally to the public.
2 That's my own opinion, you know.

3 MR. SENGER: And Hawk Relay has indicated that they're
4 offering it to anyone and everyone who has access to the
5 website. And the website is a very easy website. They
6 advertise it as such. And clearly I agree with you,
7 Commissioner Johnson, that I see no harm in that so I'm
8 recommending approval.

9 It's just that it's a very cumbersome method to go
10 through this, and I find it -- you know, the way the FCC has
11 done this, I don't know, it's --

12 CHAIRMAN JOHNSON: Well, Mr. Senger look at it this
13 way. As soon as we start to think COAs are a routine and
14 ministerial matter, you get -- you get an interesting one.

15 Any other Commissioner or advisor questions?

16 Commissioner Kolbeck.

17 COMMISSIONER KOLBECK: I believe you mentioned the
18 website. Is that up and running and currently performing at
19 100 percent, or is there more to do?

20 MR. HAWK: Yes. The website is running, and we have
21 been offering services since October of this last year. But we
22 have been working as a subcontractor in another organization who
23 already has certification of authority. So we're just trying to
24 branch out onto our own and receive our own certification
25 instead of subcontracting through another organization.

1 COMMISSIONER KOLBECK: Okay. Thank you.

2 CHAIRMAN JOHNSON: Any other comments or questions?

3 Hearing none, the motion would be in order. And I
4 would move that the Commission grant a Certificate of Authority
5 to Hawk Relay, LLC with the waivers and standard restrictions
6 that were recommended by staff.

7 The motion has been made. No second is required. Any
8 discussion on that motion?

9 Hearing none, we'll proceed to vote.

10 Kolbeck.

11 COMMISSIONER KOLBECK: Aye.

12 CHAIRMAN JOHNSON: Hanson.

13 COMMISSIONER HANSON: Aye.

14 CHAIRMAN JOHNSON: Johnson votes aye. The motion
15 carries 3-0. Thank you very much.

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STATE OF SOUTH DAKOTA)

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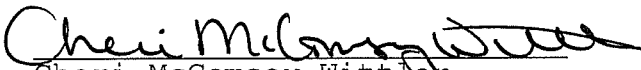
CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional
Reporter, Certified Realtime Reporter and Notary Public in and
for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed
shorthand reporter, I took in shorthand the proceedings
had in the above-entitled matter on the 26th day of June 2007,
and that the attached is a true and correct transcription of the
proceedings so taken.

Dated at Pierre, South Dakota this 13th day of July
2007.


Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter